

BEFORE THE INDIANACASE REVIEW PANEL

In The Matter of K.M.)	
Petitioner)	
)	
and)	CAUSE NO. 111214-84
)	
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

The Petitioner, K.M., in the 2008-2009 school year attended Jeffersonville High School (Jeffersonville) during his freshman year. Petitioner then transferred to the Rock Creek Community Academy (Rock Creek) for his sophomore and junior years where he was given limited eligibility for transferring without a change of residence. On August 18, 2011, Petitioner enrolled at Jeffersonville High School (Jeffersonville) for the 2011-2012 school year. On September 11, 2011 K.M.'s mother completed the student's portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) and provided the reason due to a corresponding change of address.

On September 27, 2011, Rock Creek completed its portion of the Transfer Report as the sending school and recommended Petitioner receive limited eligibility status under Rule 19-5, a transfer with a corresponding change of residence, and did not sign the Rule 17-8.5 verification. On September 29, 2011, Jeffersonville completed its portion of the Transfer Report as the receiving school and recommended that Petitioner receive full eligibility under Rule 19-6.2.

On September 30, 2011, the IHSAA Assistant Commissioner Searcy concluded that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence by his mother, and determined Petitioner to have limited eligibility at Jeffersonville through March 12, 2012, having full eligibility March 13, 2012. On October 16, 2011, the Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility. On November 17, 2011, the IHSAA Review Committee hearing was held and in its

order, issued December 1, 2012, the Committee upheld the Commissioner's determination that the Petitioner receive limited eligibility for 365 days or until March 13, 2012.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ on December 14, 2011. On December 19, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On January 12, 2012, the CRP held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

FINDINGS OF FACT

1. As a freshman, in 2008, Petitioner attended Jeffersonville where he participated in basketball and football.
2. Petitioner transferred to Rock Creek for his sophomore and junior years and was given limited eligibility.
3. While at Rock Creek, Petitioner participated in varsity basketball and varsity soccer.
4. Petitioner played varsity basketball his sophomore year while he had limited eligibility status.
5. During the time Petitioner attended Rock Creek, the Assistant Coach was fired but retained as a teaching assistant and allowed him continued access to students without restrictions from the Head Coach.
6. Petitioner completed his junior year at Rock Creek.

¹ The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Seven members were present at the meeting, including Mr. Pat Mapes (chairperson), Mr. Matthew Rager, Mr. Keith Pempek, Mr. Marcus Robinson, Ms. Dana Cristee, Mr. Earl Smith and Ms. Cathy Kink. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

7. Petitioner moved several times during the time period of January 2011-August 2011. The last residence change occurred in August of 2011 and Petitioner address at this time was in the same district as he did while attending Rock Creek.
8. During the summer of 2011, Petitioner enrolled at Jeffersonville for the 2011-2012 school year.
9. Petitioner's mother completed the student's portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) and provided the reason for the transfer was for the student to enroll in a technology systems and welding certification program as well as the parent's inability to pay tuition at Rock Creek.
10. On September 27, 2011, Rock Creek completed its portion of the Transfer Report as the sending school and recommended Petitioner receive limited eligibility status under Rule 19-6.2.
11. On September 29, 2011, Jeffersonville completed its portion of the Transfer Report as the receiving school and recommended that Petitioner receive full eligibility under Rule 19-5.
12. On September 30, 2011, the IHSAA Assistant Commissioner Searcy concluded that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence by his parent, and determined Petitioner to have limited eligibility at Jeffersonville through March 12, 2012, receiving full eligibility on March 13, 2012.
13. On December 1, 2011, the IHSAA Review Committee upheld the Commissioner's determination that the Petitioner receive limited eligibility through March 12, 2012, receiving full eligibility on March 13, 2012.
14. The Petitioner timely sought review by the CRP of the Review Committee's ruling.

CONCLUSIONS OF LAW

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of

the CRP. In the instant matter, the Respondent has rendered a final determination of limited eligibility for one year, until March 13, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.

3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," *I.C. 20-26-14-6(c)(2)*, not a hearing. The Panel *is not* required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See I.C. 20-26-14-6(c)(1)*. If the Panel upholds *the IHSAA decision*, a court of jurisdiction may consider the IHSAA decision, *I.C. 20-26-14-7(c)*, as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.
4. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful *and unreasonable*, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." *Id.* citing *Dep't of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

5. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.

6. Under IHSAA Rule 19-6.2, Limited Eligibility When Transfer Without Change of Residence by Parents, provides in pertinent part that a student who transfers without a corresponding change of residence to a new district by the student's parents will have limited eligibility for one year from the date of enrollment and continues until the first anniversary of the date on which the student last participated in athletics at the former school.
7. Under IHSAA Rule 17-8.1 and Rule 17-8.2, an order may be set aside if clear and convincing evidence is presented to show that enforcement of an IHSAA rule will not serve to accomplish the primary purpose of the Rule; the spirit of the rule will not be offended or compromised by the waiver; and when a waiver is requested, a hardship condition exists.
8. Substantial evidence does not exist in the record to support a finding that a bona fide change of residence to a new district or territory as required under Rule 19-5 did occur:

The Petitioner changed residences many times in 2011; however, there is substantial evidence in the record to show that the Petitioner did not intend for the changes in residence to be permanent. According to Rule 19-5, a bona fide change of residence is necessary in order for a Petitioner to show that under Rule 19-5 a bona fide change of residence by the Petitioner's family occurred. The record is without substantial evidence that a bona fide change of residence to provide full eligibility as the Petitioner's changes of residence were either made without the intention of the change to be permanent or were made within the same district or territory as Rock Creek and therefore, full eligibility cannot be granted under Rule 19-5.

9. Substantial evidence in the record to support limited eligibility under Rule 19-6.2: There is substantial evidence in the record to support a finding that the Petitioner transferred from Rock Creek to Jeffersonville without a corresponding change of residence by his parents. The Petitioner qualifies for limited eligibility through March 12, 2012 and is eligible for full eligibility on March 13, 2012.
10. Petitioner attends Prosser School of Technology and as this cooperative school receives funds from both Jeffersonville and Rock Creek if the Petitioner is academically eligible to play for Jeffersonville under limited eligibility then he should also be eligible to play under full eligibility at Rock Creek so long as he remains academically eligible:

The Panel considered the predicament the Petitioner faces which is unlike many other similarly situated public school students. The Petitioner was not allowed to return to the sending school, Rock Creek, and receive full eligibility to play sports in his senior year since Rock Creek closed its senior class. The Panel considered the fact that the Prosser School, where the Petitioner is enrolled in technology and welding classes, receives funding from both Jeffersonville and Rock Creek.

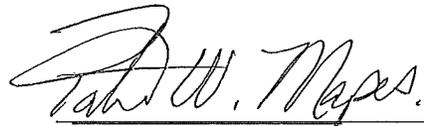
11. The Panel postulated that since the schools both fund Prosser and the Petitioner is enrolled at Prosser, and if the Petitioner were academically eligible to play sports at Jeffersonville under limited eligibility, then he would likewise be eligible to play sports at Rock Creek under full eligibility.
12. Also, the Panel noted substantial evidence in the record that Rock Creek allowed the Petitioner to play varsity basketball during his sophomore year even though the Petitioner had limited eligibility. The Panel strongly encourages the IHSAA to take appropriate measures to reprimand any non-compliant member school for a rule infraction in order to promote fairness among the member schools as well as preserve the integrity of the process established by the IHSAA.
13. Therefore, the IHSAA decision to provide Petitioner with limited eligibility for one year, or through March 12, 2012, was not arbitrary and capricious and was supported by substantial evidence. Therefore, the IHSAA Review Committee's determination that Petitioner receive limited eligibility or junior varsity eligibility at Jeffersonville through March 12, 2012 is upheld.

ORDER

The IHSAA Review Committee order is hereby **UPHELD** by a vote of 7-0. Petitioner is to have LIMITED ELIGIBILITY or junior varsity eligibility at Jeffersonville through March 12, 2012 and receive full eligibility on March 13, 2012. The order is also modified to indicate that Petitioner have FULL ELIGIBILITY immediately at Rock Creek.

DATE: _____

1-26-12



Pat Mapes, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.